

INTRODUCTION
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"Outstanding Business - A Native Claims Policy" was released on May 13, 1982 by the Honourable John Munro, Minister of Indian and Northern Affairs. This policy statement (in booklet form) deals with "specific" claims - those arising from government action in the administration of the Indian Act and the treaties. The statement consists of three parts: Part One includes an introduction and brief sections on Indian treaties, the Indian Act, recent history and Indian views. Part Two consists of the policy and the process, while Part Three provides the guidelines for submission and assessment of claims, and compensation.

Excerpts from the statement appear below and a complete copy may be obtained from the Minister of Supply and Services Canada (referring to Catalogue No. R15-2/1982), or from the Department of Indian Affairs and Northern Development (No. Q5-5171-000-BB-A1).

OUTSTANDING BUSINESS: A NATIVE CLAIMS POLICY

SPECIFIC CLAIMS

FORWARD

The claims referred to in this booklet deal with specific actions and omissions of government as they relate to obligations undertaken under treaty, requirements spelled out in legislation and responsibilities regarding the management of Indian assets. They have represented, over a long period of our history, outstanding business between Indians and government which for the sake of justice, equity and prosperity now must be settled without further delay.

To date progress in resolving specific claims has been very limited indeed. Claimants have felt hampered by inadequate research capabilities and insufficient funding; government lacked a clear, articulate policy. The result, too often, was frustration and anger. This could not be allowed to continue. The Government of Canada, therefore, undertook a review of the situation including consultation with Indian groups across the country. This booklet represents the outcome of this review.

Together with this effort at meeting the concerns of the Indian people, the Government has approved a substantial increase in the funding made available to claimants for their research and negotiation activities, it has, also, rein-

forced the capabilities of the Office of Native Claims. The instruments for greater success are now in place.

INTRODUCTION

The federal government's policy on Native claims finds its genesis in a statement given in the House of Commons on August 8, 1973 by the Minister of Indian Affairs and Northern Development. Since that time experience and consultations with Indian bands and other Native groups and associations have prompted the government to review and clarify its policies with respect to the two broad categories of claims: comprehensive claims and specific claims.

The term "comprehensive claims" is used to designate claims which are based on traditional Native use and occupancy of land. Such claims normally involve a group of bands or Native communities within a geographic area and are comprehensive in their scope including, for example, land, hunting, fishing and trapping rights and other economic and social benefits.

The term "specific claims" with which this booklet deals refers to those claims which relate to the administration of land and other Indian assets and to the fulfillment of treaties.

This booklet traces the historical relationship that has developed between the Indians and the Crown through the treaty process as well as examining more recent events leading toward the adoption of the current policy on specific claims. Its major purpose, however, is to outline this policy and to enunciate guidelines regarding the bases for specific claims, operation of the claims process, assessment of claims and compensation.

INDIAN TREATIES

Treaties play a significant part in the heritage of Canada's Indians and are central to many of their existing claims. As far back as the Royal Proclamation of 1763, the British sovereign recognized an Indian interest in the lands occupied by various Indian tribes which could only be ceded to, or purchased by, the Crown. This policy led to the tradition of making agreements, or treaties as they were later called, with the Indians.

THE INDIAN ACT

As well as being concerned with the fulfillment of Indian treaties, specific claims relate to the administration of land and other assets under the Indian Act.

The two principal categories of Indian assets which fall under federal government management are Indian reserve lands and Indian band funds and hence are most often at the centre of Indian claims where breach of an obligation arising out of government administration is asserted. In turn, land-related claims have to date been most frequently raised. The latter may find their origin in such areas as the taking of reserve lands without lawful surrender by the band concerned or failure to pay compensation where lands were taken

under legal authority.

RECENT HISTORY

Over the years following the signing of the treaties, Indians concluded that the government had not fulfilled all of its commitments to them. Some Indians maintained that the government had reneged on some of its promises under treaty. Others charged that the government had deliberately disposed of their reserve lands without first securing their permission. Claims of mismanagement of band funds and other assets were presented to government.

Faced with an increase of such claims and a growing discontent among the Indian population, the government determined to give careful consideration to each of these claims in order to determine their validity and its responsibility.

Approximately 250 specific claims had been presented to the Department by the end of December 1981. Twelve claims had been settled involving cash payments of some \$2.3 million. Seventeen claims had been rejected and five had been suspended by the claimants. Negotiations were in progress on 73 claims and another 80 were under government review. Twelve claims had been filed in court and 55 others referred for administrative remedy (e.g. return of surrendered but unsold land).

It is clear however that the rate at which specific claims have been resolved does not correspond with the expectations of the Government of Canada or the Indian claimants. This fact plus the estimated hundreds of other claims which are being withheld pending clarification and resolution of the existing claims policy underscores the seriousness with which the government views the current situation and has led to the reevaluation of its policy on specific claims.

INDIAN VIEWS

General Indian dissatisfaction with the specific claims policy and procedures has been evident for a number of years. This culminated in a call for a new policy at the First Nations Conference in Ottawa in 1980.

In the first instance Indian groups have complained that the lawful obligation criterion has been too narrow to permit their claims to be dealt with fairly and hence has been an inhibiting factor in their resolution. They believe that claims should be based on moral and equitable grounds as well as lawful obligation and these should be clearly set out.

With regard to the assessment of claims, Indian representatives stated that rules of evidence, time limitations and other procedural defences should be relaxed or eliminated. They added that oral tradition should be accepted as evidence. It was further stated that Indians should have access to Department of Justice opinions so that adequate responses could be prepared.

In terms of process it was held that the department should actively assist in the preparation of claims, making internal documents more easily available and generally acting in a supporting role. The Office of Native Claims should either be disbanded or given a more liberal mandate to settle claims. It was

also held that the government should not unilaterally assess the validity of a claim but rather that greater efforts should be made at reaching consensus on facts and merits. Furthermore, funding assistance should be increased in amount and extended as accountable contributions to all phases of the claims process.

In the area of compensation, the general view expressed was that bands should be restored to positions held before loss.

Indian representatives all stated, in the strongest of terms, that Indian views must be considered in the development of any new or modified claims policy. It was also pointed out, in nearly every case, that any national policy for claims resolution should take account of regional variations in the nature of claims and in the circumstances lying behind them.

All of these views have been taken into consideration by the government in developing new policy initiatives as outlined in the next section. The policy as now adopted by the government, while not meeting in full the wishes of the Indian people in the area of specific claims, will clarify procedures and liberalize past practice.

THE POLICY: A RENEWED APPROACH TO SETTLING SPECIFIC CLAIMS

1) Lawful Obligation

The government's policy on specific claims is that it will recognize claims by Indian bands which disclose an outstanding "lawful obligation", i.e., an obligation derived from the law on the part of the federal government.

A lawful obligation may arise in any of the following circumstances:

- i) The non-fulfillment of a treaty or agreement between Indians and the Crown.
- ii) A breach of an obligation arising out of the Indian Act or other statutes pertaining to Indians and the regulations thereunder.
- iii) A breach of an obligation arising out of government administration of Indian funds or other assets.
- iv) An illegal disposition of Indian land.

2) Beyond Lawful Obligation

In addition to the foregoing, the government is prepared to acknowledge claims which are based on the following circumstances:

- i) Failure to provide compensation for reserve lands taken or damaged by the federal government or any of its agencies under authority.
- ii) Fraud in connection with the acquisition or disposition of Indian reserve land by employees or agents of the federal government, in cases where the fraud can be clearly demonstrated.

THE PROCESS: HOW SPECIFIC CLAIMS ARE DEALT WITH

1) Presentation of the Claim

Specific claims are presented by Indian bands to the Minister of Indian Affairs and Northern Development, acting on behalf of the Government of Canada.

2) Review of Claims by the Office of Native Claims (ONC)

The Office of Native Claims undertakes a review of the claim at the direction of the Minister of Indian Affairs and Northern Development. In conducting its review, ONC analyses the historical facts presented in the claim and arranges for additional research if required. It also investigates the sequence of historical events surrounding the issues raised in the claim.

All pertinent facts and documents are then referred by ONC to the Department of Justice for advice on the federal government's lawful obligation.

3) Determination of the Acceptability of the Claim

On the basis of the legal advice received from the Department of Justice, the Minister of Indian Affairs and Northern Development accepts on behalf of the Government of Canada, such claims as are eligible for negotiation and advises the claimant group of the decision.

4) Resolution

In cases where the Minister accepts a claim as negotiable in whole or in part, the Office of Native Claims is authorized to negotiate a settlement with the claimant on behalf of the Minister and the federal government.

5) Further Review of the Claim

A claim which has not been accepted for negotiation may be presented again at a later date for further review, should new evidence be located or additional legal arguments produced which may throw a different light on the claim.